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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-02-PA-118
WOYK, Inc.	)	
WOYK(AM)	)	NAL/Acct. No. 200232400005
York, PA	)	
	)	FRN: 0005-0231-06

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: July 17, 2002**

By the District Director, Philadelphia Office Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that WOYK Inc. has apparently violated Section 73.49 of the Commission's rules ("the Rules"),<sup>1</sup> by failing to maintain an adequate tower fence enclosure. We conclude that WOYK Inc. is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

**II. BACKGROUND**

2. On March 8, 2002, FCC Agent Donald Marsh inspected the three-tower antenna array of WOYK(AM) in York, PA. Agent Marsh observed the middle tower (Antenna Structure Registration number 1029250) was not enclosed within an effective locked fence. This tower could be accessed through an opening in the fence created when a portion of the fence fell off a warped fence post.

**III. DISCUSSION**

3. Section 73.49 of the Rules concerning AM Transmission system fencing requirements states "Antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures."

4. Based on the evidence before us, we find that WOYK Inc. willfully<sup>2</sup> violated Section 73.49 of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the*

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<sup>1</sup> 47 C.F.R. § 73.49

<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

*Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)<sup>3</sup>, sets the base forfeiture amount at \$7,000 for AM tower fencing. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended,<sup>4</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a seven thousand dollar (\$7,000) monetary forfeiture is warranted.

#### **IV. ORDERING CLAUSES**

5. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Rules<sup>6</sup> WOYK Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willfully violating Section 73.49 of the Rules.

6. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, WOYK INC. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232400005, and FRN 0005-0231-06.

8. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232400005.

9. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

10. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street,

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<sup>3</sup>47 C.F.R. § 1.80.

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, and 0.311.

**Federal Communications Commission**

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S.W., Washington, D.C. 20554.<sup>7</sup>

IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to WOYK, Inc., 1360 Copenhaffer Rd., York, PA 17404.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes  
District Director  
Philadelphia Office

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<sup>7</sup> See 47 C.F.R. § 1.1914.